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TECH CENTER 1600/2900

APR 24 2002

April 22, 2002

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Commissioner for Patents
Washington, D.C. 20231

Art Unit 1652

Re: U.S. Utility Patent Application
Appl. No. 09/722,441; Filed: November 28, 2000
For: **Increased Lysine Production by Gene Amplification**
Inventors: Hanke *et al.*
Our Ref: 1533.1030002/MAC/PAC

Sir:

Transmitted herewith for appropriate action are the following documents:

1. Reply to Restriction Requirement; and
2. One (1) return postcard.

It is respectfully requested that the attached postcard be stamped with the date of filing of these documents, and that it be returned to our courier. In the event that extensions of time are necessary to prevent abandonment of this patent application, then such extensions of time are hereby petitioned.

The U.S. Patent and Trademark Office is hereby authorized to charge any fee deficiency, or credit any overpayment, to our Deposit Account No. 19-0036.

Respectfully submitted,

STERNE, KESSLER, GOLDSTEIN & FOX P.L.L.C.

Michele A. Cimbala
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Registration No. 33,851

MAC/PAC:drb
Enclosures



IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

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APR 24 2002

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In re application of:

HANKE *et al.*

Appl. No. 09/722,441

Filed: November 28, 2000

For: **Increased Lysine Production by
Gene Amplification**

Confirmation No. 4696

Art Unit: 1652

Examiner: Kerr, K.

Atty. Docket: 1533.1030002/MAC/PAC

Reply To Restriction Requirement

Commissioner for Patents
Washington, D.C. 20231

Sir:

In reply to the Office Action dated **March 20, 2002**, requesting an election of one invention to prosecute in the above-referenced patent application, Applicants hereby provisionally elect to prosecute the invention of Group II, species (i), represented by claims 12 and 19. This election is made without prejudice to or disclaimer of the other claims or inventions disclosed.

With respect to the Examiner's restriction of Group II into species (a) thru (l) and the reasons stated therefor, Applicants respectfully traverse. Applicants respectfully request that species (a) thru (l) of Group II be rejoined because each species contains SEQ ID NO:2, therefore there is a relationship between the species. The M.P.E.P. § 806.04(f), states:

[c]laims to be restricted to different species must recite the mutually exclusive characteristics of such species.

Thus, in view of the M.P.E.P. § 806.04(f), Applicants respectfully request that species (a) thru (l) of Group II be rejoined.

With respect to the Examiner's division of the claims into seven groups and the reasons stated therefor, Applicants respectfully traverse. Groups I thru VII are related as between polypeptides, polynucleotides, and vectors and host cells comprising said molecules for use in the production of lysine. Even assuming, *arguendo*, that Groups I thru VII represent distinct or independent inventions, Applicants submit that to search and examine the subject matter of the groups together would not be a serious burden on the Examiner. Applicants submit that the polypeptides, polynucleotides, and the vectors and host cells comprising these molecules all share a common function in that they all act in the production of lysine. The common function lessens the burden on the Examiner as there will be significant overlap in the search and examination of polynucleotides which encode the active polypeptides and the vectors and host cells comprising these molecules. This common utility thereby makes it a simple matter for the Examiner to search and examine publications disclosing the polynucleotides involved in lysine biosynthesis. The M.P.E.P. § 803, states:

If the search and examination of an entire application can be made without serious burden, the examiner must examine it on the merits, even though it includes claims to independent or distinct inventions.

Thus, in view of the M.P.E.P. § 803, Applicants respectfully request that the claims of Groups I thru VI be searched and examined in the captioned application. Applicants retain the right to petition from the Restriction Requirement under 37 C.F.R. § 1.144. Reconsideration and withdrawal of the Restriction Requirement, and consideration and allowance of all pending claims, are respectfully requested.

It is not believed that extensions of time are required, beyond those that may otherwise be provided for in accompanying documents. However, if additional extensions of time are necessary to prevent abandonment of this application, then such extensions of

time are hereby petitioned under 37 C.F.R. § 1.136(a), and any fees required therefor are hereby authorized to be charged to our Deposit Account No. 19-0036.

Respectfully submitted,

STERNE, KESSLER, GOLDSTEIN & FOX P.L.L.C.



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